



DTRA INSTRUCTION 5400.07

FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Originating Component: GC

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Approved by: Kyle M. Lampela, Chief of Staff

Purpose: This instruction implements the policies, responsibilities, and procedures of the DTRA FOIA Program pursuant to DoD Manual 5400.7 (DoDM 5400.7), Part 286 of Title 32, Code of Financial Regulations (CFR), and in accordance with the authority in Section 552 of Title 5, United States Code (U.S.C.) (also known and referred to in this instruction as "The Freedom of Information Act (FOIA)").

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This instruction applies to all entities of DTRA, and takes precedence over all related internal standard operating procedures or guidance.

1.2. POLICY. It is DTRA policy that:

a. All personnel comply with the FOIA, DoD FOIA policy, and this instruction. Strict adherence is necessary to provide uniformity in the implementation of the FOIA program, and to create conditions that will promote public trust. The failure of the agency to adhere to the FOIA and the implementing procedures could pose a litigation risk and result in a loss of public trust. Activities will be conducted in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Under the FOIA, the public can obtain records from DTRA, subject to the statutory exemptions enacted by Congress to protect information that must be held in confidence for the government to function effectively or for other purposes.

b. The DTRA FOIA Office provides assistance to requestors to help them comply with established procedures and to ensure that procedural matters do not unnecessarily impede a requestor from obtaining records promptly.

SECTION 2: RESPONSIBILITIES

2.1. DEPUTY DIRECTOR (DDIR). The DDIR will serve as the Appellate Authority, responsible for reviewing FOIA appeals and making the final decision on such appeals.

2.2. OFFICE OF THE GENERAL COUNSEL (GC). The GC designates the following officials to ensure compliance with the policies and procedures that govern administration of the FOIA program.

a. DEPUTY GC. The Deputy GC:

Serves as the Initial Denial Authority (IDA), responsible for reviewing information to determine whether it meets the criteria for withholding under one or more of the FOIA exemptions. This determination may be made upon the recommendation of a subject matter expert (SME). The IDA will be recused from participating in the processing and/or review of any FOIA requests submitted by the IDA. In those instances, the GC will serve as the IDA. The IDA is also responsible for making the final determinations on requests for expedited processing and fee waivers.

b. CHIEF FOIA OFFICER. The Chief FOIA Officer:

(1) Serves as the FOIA Public Liaison to whom requesters can raise concerns about the services they receive from the FOIA office. The FOIA Public Liaison also assists in reducing delays in responding to requests and works with the Office of Government Information Services (OGIS) in resolving disputes between FOIA requesters and the agency.

(2) Administers the FOIA Program and implements the procedures necessary to ensure compliance with the FOIA and DoD guidance.

(3) Coordinates with the Governmental and Public Affairs Office (GP) on all FOIA requests received by members of the media. All FOIA requests from the media will be forwarded to GP upon receipt. A copy of all final responses to FOIA requests received will also be provided to GP.

(4) Informs DTRA leadership and the Directorate for Oversight and Compliance (DO&C), Office of the Deputy Chief Management Officer, of significant FOIA requests, as required by paragraph 3.14 of DoDM 5400.07.

(5) Provides training for personnel who implement FOIA, respond to or assist in responding to FOIA requests, or have duties associated with this instruction.

(6) Submits timely FOIA reports to DO&C upon request, and as required by DoDM 5400.07.

2.3. DIRECTOR, ACQUISITION, FINANCE, AND LOGISTICS (AL). The Director, AL, ensures that fees collected under FOIA are forwarded to the Defense Finance and Accounting Service, Defense Accounting Office for submission to the Treasurer of the United States.

2.4. DIRECTOR, RESEARCH AND DEVELOPMENT (RD). The Director, RD through the Defense Threat Reduction Information Analysis Center (DTRIAC), will be the repository for declassified, reclassified, and sanitized copies of documents that have been released under FOIA. Through DTRIAC, RD will ensure that two copies of such reports are forwarded to the National Technical Information Service for availability in the public domain.

2.5. DIRECTORS OF THE DIRECTORATES (TO INCLUDE JD) AND STAFF OFFICE CHIEFS. The Directors of the Directorates (to include JD) and Staff Office Chiefs will:

- a. Ensure that personnel acting on FOIA requests are familiar with this instruction.
- b. Ensure that FOIA actions tasked to their Directorate/Staff Office are closely monitored for accountability and responses are provided no later than the suspense date established by the FOIA office to ensure the organization meets statutory and/or expedited timelines.
- c. Ensure the appropriate SME is assigned to search for records responsive to a FOIA request and review records that are deemed responsive to a FOIA request; to include records containing classification markings or distribution limiting statements. Such records must be reviewed in their entirety to determine if the markings still apply and whether any information can be reasonably segregated and released under the FOIA.
- d. Ensure all responsive documents are shared with the FOIA office, no matter the classification markings or distribution limiting statements, to guarantee all FOIA requirements are met.
- e. Appoint an individual to serve as the FOIA point of contact (POC) for their Directorate/Staff Office. Provide POC information to the FOIA office upon request or upon changes in POCs.
- f. Ensure any misdirected FOIA requests are forwarded to the FOIA Office immediately upon receipt.
- g. Ensure all personnel complete the required FOIA training once upon arrival and once every three years thereafter.

SECTION 3: PROCEDURES

3.1. FOIA REQUESTS. FOIA requests are requests from members of the public for access to agency records that exist at the time the request is received. All FOIA requests must be perfected before processing can start. See Glossary for definitions. Any questions about what constitutes a FOIA request or agency record should be directed to the FOIA office.

3.2. DESCRIPTION OF REQUESTED RECORD. The requestor is responsible for describing the records sought and providing sufficient detail to enable personnel to locate those records with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist personnel in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Requesters must also provide contact information, such as a telephone number, email address, and/or mailing address, to assist the agency in communicating and providing the requested records.

3.3. SUBMITTING FOIA REQUESTS. The FOIA office is the central processing point for all FOIA requests. All incoming requests will be directed to the FOIA office. FOIA requests received by other DTRA offices will immediately notify the FOIA office at 703-767-1792. Once the FOIA Office is notified, the original FOIA request should be forwarded to the DTRA FOIA Office.

FOIA requests should be clearly marked as “Freedom of Information Act request” and submitted to the address below. Though this marking is not necessary, failure to annotate the envelope as a “Freedom of Information Act request” may slow the receipt of the request in the appropriate office. Requests may also be sent electronically.

Defense Threat Reduction Agency
Attn: OGC-FOIA
8725 John J. Kingman Road, Stop 6201
Fort Belvoir, VA 22060-6201
Phone: 703-767-1792
Email: dtrafoiaprivacy@mail.mil

3.4. PROCESSING REQUESTS. Requests are processed on a first-in, first-out basis. Multi-track processing, has been established to distinguish between simple, complex, and expedited requests in accordance with subpart 286.8 of Title 32, CFR. The FOIA Office will determine the processing track based on the date of receipt, the amount of work and time involved in processing the requests, and whether the requestor has been granted expedited processing. All FOIA requests are assigned and tracked by case numbers established by the FOIA office.

a. Upon receipt of a perfected request, the FOIA office will initiate a task in the Enterprise Information System (EIS) to the appropriate Directorate/Staff Office. The task will include a copy of the FOIA request and a DTRA Form 57, “DTRA Freedom of Information Act and/or Privacy Act Form” (located on the DTRA1 Forms Library page). The tasked Directorate/Staff

Office will assign a SME to conduct a thorough search for responsive records. If the SME determines that a reasonable search cannot be conducted because the request is too broad, the SME will contact the FOIA Office for clarification. SMEs tasked to complete a search for records responsive to a FOIA request, will only search agency records (see definition in Glossary). The SME tasked with conducting the search for records will not create records that are not already in existence at the time the search is being conducted.

b. If no responsive records are located, the SME will fill out the DTRA Form 57, close out the EIS tasker, and route the certified DTRA Form 57 to the FOIA Office. If the SME believes that another Directorate/Staff Office could have records responsive to the request, the SME will provide that information on the certified DTRA Form 57. The SME will not directly task another Directorate/Staff Office to conduct a search under the FOIA.

c. If responsive records are located, the Directorate/Staff Office will designate a SME within its Directorate/Staff Office to review and identify any sensitive information by bracketing and/or highlighting it and annotating each piece of information with the appropriate FOIA exemption. The SME will also close out the EIS tasker and route the certified DTRA Form 57 with the responsive records to the FOIA Office. If the SME believes that another Directorate/Staff Office or an external agency should review the responsive records prior to public release, the SME will provide that information on the certified DTRA Form 57. The SME will not directly task another Directorate/Staff Office or external agency to review responsive records under the FOIA.

d. If the review by the SME identifies classified information the appropriate classification authority will determine if the document(s) may be declassified, reclassified, or sanitized. The Directorate/Staff Office will bracket information exempt from release, provide the appropriate FOIA exemption(s), and return the package to the FOIA Office for processing with the certified DTRA Form 57. The DTRA Form 57 should also specify if a review is needed by another Directorate/Staff Office or external agency.

(1) When the SME recommends additional review by another agency, s/he will provide the FOIA Office with the full name and address of that organization's POC, if known. The FOIA Office will forward the documents to that organization for further review.

(2) If the SME identifies information that should be either classified or reclassified and the information has not been previously released to the public, the SME must notify the FOIA Office and follow the procedures outlined in Enclosure 4, Paragraph 18, Volume 1 of DoD Manual 5200.01.

(3) If the SME identifies information that is marked as Restricted Data (RD) and/or Formerly Restricted Data (FRD), the SME must notify the FOIA Office. All RD/FRD records require a Department of Energy (DOE) review. The FOIA Office will send all RD/FRD documents to DOE for review after the SME completes the initial agency review.

(4) The FOIA Office will coordinate with the Operations Security Office (OPSEC) under the Intelligence and Plans Directorate (IP) regarding release of any previously classified information recommended for release under the FOIA.

e. If there is a disagreement between the FOIA Office and the Directorate/Staff Office SME regarding the use of a FOIA exemption to withhold information and the dispute cannot be resolved at that level, the FOIA Office will route the final packet to the appropriate Director/Staff Office Chief for review before going to the IDA. The Director/Staff Office Chief will have the opportunity to provide any relevant input to the IDA to resolve the dispute before the IDA makes the final determination on whether or not to withhold the information.

3.5. APPEALS. If the IDA makes the decision to deny information requested under FOIA, that denial may be appealed by the requester in writing to the DDIR. Appeals may also be made for any determination the requestor considers adverse to include but not limited to: fee category claim; denial of waiver or reduction of fees; fee estimate; failure to grant expedited processing; no records determinations; or not providing a response determination to a FOIA request within the statutory time limits.

Appeals should be clearly marked as such, both on the envelope and in the body of the letter. Requestors appealing such denials should include a copy of the denial letter, the case number, a statement of the relief sought, and the grounds upon which it is brought. Appeals should be sent to the address provided on the final response letter and postmarked no later than 90 calendar days after the date of the final denial letter.

GLOSSARY

G.1. ACRONYMS.

AL	Director, Acquisition, Finance, and Logistics
CFR	Code of Federal Regulations
DDIR	Deputy Director
DO&C	Directorate of Oversight and Compliance
DOE	Department of Energy
DTRA	Defense Threat Reduction Agency
DTRIAC	Defense Threat Reduction Information Analysis Center
FOIA	Freedom of Information Act
FRD	Formerly Restricted Data
GC	Office of the General Counsel
GP	Governmental and Public Affairs Office
IDA	initial denial authority
IP	Director, Intelligence and Plans
JD	Joint Improvised-Threat Defeat Organization
PA	Privacy Act
POC	point of contact
RD	Restricted Data
RD	Director, Research and Development
SME	subject matter expert
U.S.C.	United States Code

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purposes of this instruction. See reference (e) for other definitions.

administrative appeal. A request by a member of the public, made under FOIA, asking the appellate authority to reverse, modify, or reconsider any adverse determination. A requester may also appeal the failure of the agency to respond within the statutory time limits.

agency record. All documents or records (including electronic records) created or obtained by a U.S. Government agency that are in the agency's possession and control at the time a FOIA

request is received. The definition of an agency record under FOIA is more expansive than the definition of a federal record, e.g. drafts and working files are not official records but are still agency records responsive to FOIA requests.

appellate authority. The Agency FOIA Program head, or designee, having jurisdiction to review and possibly reverse, remand, or amend any adverse determination.

electronic record. Records (including e-mail correspondences) that are created, stored, and retrievable by electronic means.

FOIA. FOIA is a federal law that establishes the public's right to request existing records from Federal Government agencies. FOIA is known by its legal cite as "5 U.S.C. § 552." FOIA provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. FOIA thus established a statutory right of public access to executive branch information in the Federal Government.

FOIA request. A written request for agency records that reasonably describes the records sought, enabling a DoD Component employee familiar with the files to locate the records with a reasonable amount of effort.

FOIA requester. Any person, including a partnership, corporation, association, State or State agency, foreign government, foreign national, or a lawyer or other representative acting on behalf of any person who submits a FOIA request. This definition specifically excludes agencies within the Executive Branch of the U.S. Government.

IDA. An official who has been granted authority by the head of a DoD component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. IDA may also deny a fee category claim by a requester; deny a request for expedited processing; deny a request for a waiver or reduction of fees; review a fee estimate; and confirm that no records were located in response to a request.

perfected FOIA request. A FOIA that arrives at the FOIA office in possession of the records. The statutory time limit for responding to a FOIA request does not begin until it is perfected.

REFERENCES

United States Code, Title 5, Section 552

Code of Federal Regulations, Title 32, Part 286

DoD Directive 5400.7, “DoD Freedom of Information Act (FOIA) Program,” January 2, 2008

DoD Manual 5200.01, Volume 1, “DoD Information Security Program: Overview,
Classification, and Declassification,” February 24, 2012

DoD Manual 5400.07, “DoD Freedom of Information Act (FOIA) Program,” January 25, 2017